Elwood Lui (State Bar No. 45538)
Jeffrey A. LeVee (State Bar No. 125863)
Courtney M. Schaberg (State Bar No. 193728)
JONES, DAY, REAVIS & POGUE
555 West Fifth Street, Suite 4600
Los Angeles, CA 90013-1025
Telephone: (213) 489-3939
Facsimile: (213) 243-2539

Attorneys for Defendant
INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KARL AUERBACH,

Plaintiff,

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Defendant.

Case No. BS 074771

DECLARATION OF VINTON CERF IN SUPPORT OF ICANN'S MOTION FOR SUMMARY JUDGMENT

(THE HONORABLE DZINTRA JANAVS)

Date: June 21, 2002
Time: 9:30 a.m.
Dept.: 85

I, Vinton Cerf, declare:

1. I am the Chairman of the Board of Defendant Internet Corporation for Assigned Names and Numbers ("ICANN"). I have personal knowledge of the matters set forth herein and am competent to testify to those matters.

2. Mr. Auerbach has never, pursuant to Section 6 of the ICANN Inspection Procedures, requested full ICANN Board review of the Audit Committee's determination regarding the arrangements for his inspection of the corporate records.

3. On March 18, 2002, I received an e-mail from John Gilmore, in which he asserts that he "contributed significant funding for" this lawsuit. Mr. Gilmore is one of the founders of the Electronic Frontier Foundation, the organization providing representation for Mr. Auerbach in this lawsuit. A true and correct copy of the e-mail from Mr. Gilmore is attached hereto as Exhibit 1.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

This declaration was signed on April 16, 2002 at Washington, D.C.

Vinton Cerf

>Date: Tue, 19 Mar 2002 14:26:26 -0800
>From: John Gilmore <gnu@new.toad.com>
>Subject: Re: ICANN: Auerbach's Allegations Off Target
>To: vcerf@mci.net, gnu@new.toad.com
>
>> "Karl paints this as a dispute between him and ICANN management, but
>> nothing could be further from the truth," noted Board chairman Vint Cerf.
>> "ICANN management is merely carrying out its obligation to follow the
>> wishes of the Board as a whole rather than follow the dictates of any
>> single Director."
>
>Hi, Vint.
>
>I haven't wanted to disrupt our friendship, so I've held off a long
>time in telling you what I think about how you are leading ICANN.
>That's why this message is a little longer than it needs to be; I'm
>saying things that I've been bottling up for a while.
>
>I don't want to be considered a friend of what you now stand for.
>
>You are on the wrong side of this issue, as you have been on the wrong
>side of many issues regarding ICANN. If ICANN has secrets about who
>it is doing backdoor favors with, those *should* be made public. And
>you, as Chairman, as the most prominent and trusted board member, and
>as the architect of the openness that should still be in the Internet,
>should have been way ahead of Karl Auerbach in making them public.
>
>Even if those secrets are never made public, or even if there are no
>terrible secrets inside ICANN, the activities of ICANN MUST be
>available to every person on the Board of Directors. Without
>restriction, without delay, without subversion. By law, and for good
>reasons.
>
>You have been a rubber stamp for many corrupt ideas out of Network
>Solutions, Verisign and ICANN ever since your election. When I
>complained to you in the past, such as when the NSI contract was
>amended to give them a perpetual monopoly, you said that there was
>nothing else that you could do. I disagreed with that sentiment then,
>and I disagree with it now. You could have left the contract the way
>it was, rather than amend it. You don't even have to make things better
>to keep my respect; you could keep things from getting worse. But
>you continue to choose to make things worse. Now you are defending
>ICANN's lack of openness even with its own elected directors!
>
>ICANN was created to promise openness, transparency, accountability, and
>competition. It has provided none of those, and actively works every
>month to reduce what little it has provided. You have worked with it
>to eliminate, rather than create, those promises.
>
>Opening whatever squirming can of worms that is calling the shots at
>ICANN is what is needed. I can see that ICANN management is terrified

>that directors from outside the old-boy network might actually find
>out the details of what ICANN does day by day. They have eliminated
>any future threat of that, by eliminating outside directors after this
>term. And they are delaying the current directors' access to
>information, in the hope that they can permanently avoid outside
>scrutiny.
>
>I've been a director of several California corporations. I've read
>that part of the law myself. I've invoked it in a couple of
>occasions. I contributed significant funding for Karl's lawsuit.
>Karl is right and you and the ICANN staff are wrong. And now I find
>you lying about it in a press release. "ICANN management is merely
>carrying out its obligation to follow the wishes of the Board as a
>whole..." ICANN *management* instigated those policies, the board didn't.
>The board has never even considered them.
>
>Virtually everyone at EFF has been looking for ways that we could help
>to open ICANN and get it to do what it was chartered to do. I've had
>to hold them back for years, telling them that participation was a
>waste of our scarce time -- and that no matter how much time they put
>in, ICANN would have to get really bad before it would ever get
>better. I put two years of my own life into the domain-name issues,
>with CORE. It became clear that the strings were being pulled behind
>the scenes, because the right answers were relatively obvious, yet the
>wrong answers got approved, providing billions of dollars of benefit
>to certain parties with heavy ties to the US military. Rather than
>ICANN making open decisions and using transparent processes, whoever
>pulls those strings is still controlling what happens. But under
>ICANN, the process is even murkier and further hidden from public
>scrutiny. And you're helping.
>
>All the way back at the start of ICANN, EFF and I proposed amendments
>that would provide a "Bill of Rights" and a "Sunshine Act" and a
>"Freedom of Information Act" in ICANN's Bylaws. These were all
>summarily rejected. ICANN does not give a damn about the fundamental
>rights of citizens or Internet users. It does not want to operate in
>the sunshine. And it does not want information about what it's doing
>to be made available even to its own directors, let alone to the
>public. Give me one good reason why such an organization should get
>even a millisecond more of your support -- or anyone's.
>
>The law gives directors an "absolute right" because directors exist
>to be INDEPENDENT OF and SUPERIOR TO the management. Each and every
>director has a separate duty to the company; each one carries it out
>in their own way. The Board cannot prevent any board member from
>merely inquiring into the state of the company. The Board cannot
>condition any board member's inquiry on agreement to a set of arbitrary
>terms. Nor can the management. This is not only a good idea --
>it's the law.
>
>ICANN is going down, one way or another. Either it will go down like
>East Germany, with a peaceful transition to governance responsive to the
>public will, or it will go down like Japan, with big bombs dropped on
>it. ICANN has lost all semblance of credibility and merely seeks to
>entrench its unaccountable power.
>
>I have absolutely no idea what you are doing leading that

>megalomaniac, unaccountable, unresponsive, anti-expression,
>anti-public-interest organization. Did they take your kids hostage?
>Did you sell your soul for a mess of pottage? What hold do they have
>over you?
>
>I used to think much better of you than this, Vint. You can see that
>even now I'm grasping at straws rather than believe that YOU are one
>of the megalomaniacs. But the evidence continues to pile up, and I'm
>afraid it's true. I don't want to be the friend of such a person.
>I'll see you from the other side of the courtroom. Bye.
>
> John